HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.304 of 2007

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Between:

Kavvampalli Mallaiah & others

…….. Appellants

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And

The District Revenue Officer,
Karimnagar & others

……. Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri S. Satyam Reddy

Counsel for the respondents : Government Pleader for Revenue.

13.04.2007

Per G.S. SINGHVI, C.J.

This appeal by Kavvampalli Mallaiah and three others for setting aside order dated 16-3-2007 passed by the learned Single Judge in Writ Petition No.23136 of 2006 can appropriately be termed as a frivolous piece of litigation, which deserves to be dismissed summarily.

For deciding the issue arising in the appeal, we may briefly notice the facts.

i) Land measuring Ac.5-00 comprised in Survey No.439 situated in Chintakunta Village, Karimnagar Mandal and District was assigned by the competent authority to Nomula Narsaiah sometime in 1962.

ii) After about 37 years, Mandal Revenue Officer, Karimnagar

(respondent No.3) vide his order dated 1-6-1999 resumed the land on the ground of violation of the conditions of assignment.

iii) In the meanwhile, Nomula Narsaiah appears to have died and in their capacity as legal heirs of the deceased assignee, respondent Nos.4 and 5 filed an appeal against order dated 1-6-1999.

iv) The appellants filed an application for their impleadment as parties in the appeal preferred by respondent Nos.4 and 5.

v) By an order dated 21-2-2006, Revenue Divisional Officer, Karimnagar (respondent No.2) dismissed the appeal of respondent Nos.4 and 5 as also the application filed by the appellants.

vi) The appellants challenged the aforementioned order by filing revision before District Revenue Officer, Karimnagar (respondent No.1 herein). They also approached the Andhra Pradesh State Commission for Scheduled Castes and Scheduled Tribes, which is said to have requested the District Collector to look into the matter.

vii) During the pendency of the revision petition, the appellants filed Writ Petition No.19945 of 2005 with the prayer that the respondents may be restrained from dispossessing them. The same was disposed of at the admission stage with an observation that pending consideration of the representation made for assignment, the appellants cannot be dispossessed without due process of law.

In the affidavit filed by him in support of the writ petition, appellant No.1 – Kavvampalli Mallaiah averred that the land in question is in cultivating possession of his family for last five decades and prayed that respondent Nos.1 to 3 be directed to assign the land to them because assignment made in favour of respondent Nos.4 and 5 had already been cancelled.

The learned Single Judge briefly referred to the events, which preceded filing of the writ petition, and disposed of the same with a direction to respondent No.1 to decide the revision/appeal filed by the petitioners within four weeks. The relevant portion of the order of the learned Single Judge reads as under:

> "… The first respondent should necessarily pass orders immediately on the revision filed by the petitioners. This Court also observes that as the matter of assignment of land to the petitioners or for that matter, respondents 4 and 5 have been pending for considerable long time. It would even be better if the first respondent looks into the matter and dispose of the revision/appeal filed by the petitioners as expeditiously as possible preferably within a period of four weeks from the date of receipt of copy of this order. Liberty is given to the petitioners to obtain appropriate orders from the revisional authority for stay of proceedings of the RDO."

Shri S. Satyam Reddy, learned counsel for the appellants argued that failure of the learned Single Judge to issue direction for protecting the possession of the appellants has resulted in miscarriage of justice and, therefore, the order under challenge may be set aside and the official respondents be directed not to dispossess the appellants. He submitted that if the appellants are dispossessed, the appeal/revision preferred by them against order dated 21-2-2006 passed by respondent No.2 will become futile.

In our opinion, there is no merit in the argument/ submission of the learned counsel. A careful scrutiny of the record shows that even though the family of the appellants is said to be in cultivating possession of the land for last over five decades, no application is shown to have been made by them to the competent authority for assignment of the land. Not only this, they did not challenge the assignment made in favour of late Nomula Narsaiah in 1962. The only thing which they did was to file an application for impleadment as party to the appeal preferred by the sons of late Shri Nomula Narsaiah against order dated 1-6-1999 passed by respondent No.3 for

cancellation of assignment. Even at that stage, they did not file application for assignment of land by producing evidence to support their eligibility and entitlement.

Since the appeal/revision filed by the appellants against order dated 21-2-2006 passed by respondent No.2 is pending before respondent No.1, we do not want to make any observation which may prejudice their cause, but we shudder to think as to what relief can possibly be granted to them in the proceedings of the appeal/revision because, as mentioned above, the appellants have not applied for assignment of land.

The appellants' prayer for issue of a direction to the respondents to protect their possession cannot be entertained because they have not produced any tangible evidence to show that they are in cultivating possession of the land.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.581 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

April 13, 2007

svs